

Meeting Minutes December 2, 2004

Town of Los Altos Hills City Council Regular Meeting

Thursday, December 2, 2004 6:00 P.M.

Bullis School Multi-Purpose Room, 25890 Fremont Road

1. CALL TO ORDER, ROLL CALL, AND PLEDGE OF ALLEGIANCE

Present: Mayor Mike O'Malley, Mayor Pro Tem Breene Kerr, Councilmember Emily Cheng, Councilmember Bob Fenwick and Councilmember Dean Warshawsky

Absent: None

Staff: City Manager Maureen Cassingham, City Attorney Steve Mattas, Planning Director Carl Cahill, Acting City Engineer/Director of Public Works Dave Ross and City Clerk Karen Jost

MOTION SECONDED AND CARRIED: Moved by Kerr, seconded by Warshawsky and passed unanimously to limit the length of time for public comments to three minutes.

Mayor O'Malley advised that the meeting agenda would be reordered. Agenda Item 5.2 would be considered after Agenda Item 3.2 and Agenda Item 3.3 would be changed to Agenda Item 9.2.

2. CONSENT CALENDAR

Item Removed: 2.3 (O'Malley)

MOTION SECONDED AND CARRIED: Moved by Warshawsky, seconded by Kerr and passed unanimously to approve the remainder of the Consent Calendar, specifically:

2.1 Resolution Declaring Canvass of Returns and Results of General Municipal Election held on Tuesday, November 2, 2004 – Resolution # 81-04

2.2 Approval of Minutes Regular City Council Meeting November 18, 2004
Special City Council Meeting November 18, 2004

Item Removed:

2.3 Approval of Disbursements 11/10/2004 – 11/19/2004 \$544,928.32

Mayor O' Malley requested clarification on the payment to the City of Palo Alto for \$199,689. City Manager Cassingham explained that the payment reflected the Town's share of the Regional Water Quality Control Plant (sewer treatment) expenditures for Fiscal Year.

MOTION SECONDED AND CARRIED: Moved by Kerr, seconded by Warshawsky and passed unanimously to approve the Disbursements Report for 11/10/2004 – 11/19/2004 in the amount of \$544,928.32.

3. APPOINTMENTS AND PRESENTATIONS

3.1 Presentations to Outgoing Councilmembers

The Council thanked retiring Councilmember Bob Fenwick for his service to the Town. They praised him for his honesty, his valuable advice to the Council during their deliberations on complex issues and for his participation on the negotiating team that had brought the Comcast Franchise agreement to fruition.

Mayor O'Malley presented Councilmember Bob Fenwick with a plaque recognizing his service to the Town during his tenure on the City Council.

Councilmember Fenwick introduced his family members that were in the audience. He noted that when he campaigned for his Council seat four years ago, his primary campaign issue was the undergrounding of utilities in Town. Following his election, he learned that this was not a high priority issue for the Town's residents. They were more focused on saving paths, saving open space in the Town and the style of the new Town Hall. Fenwick acknowledged that the best thing about serving on the Council had been his working relationship with Town staff. He advised that this was the best staff the Town had ever had and was pleased that he had played a role by hiring City Manager Maureen Cassingham. He noted that she had been responsible for assembling the present staff. Fenwick offered advice to the new Councilmembers to work to please themselves because the position did not deliver many accolades.

Mayor O'Malley introduced Councilmember Emily Cheng. He offered that she had been elected twice to the Council by the Town residents, first in a special election and then in the regular municipal election. O'Malley noted that Cheng had been a pleasure to work with, served the community well by her participation on the Library Joint Powers Authority and as Council Liaison to the Parks and Recreation Committee. O'Malley remarked that Councilmember Cheng had been the first female Asian Mayor to serve in Northern California.

Council congratulated Cheng on her service during her term and commitment to her constituents.

Mayor O'Malley presented Councilmember Emily Cheng with a plaque recognizing her service to the Town during her tenure on the City Council.

Councilmember Cheng thanked the Council. She explained that this was an emotional moment and it was very difficult to be retiring. Cheng noted that when she was first elected to the Council, the Town was very divided and she had worked tirelessly to bring harmony to the community. It gave her great pleasure to see the Town now work so well together to achieve common goals for the residents. Cheng acknowledged the wonderful staff and noted that she was very pleased to say she was serving on the City Council that had hired City Manager Cassingham.

OPENED PUBLIC COMMENT

Roger Burnell, Community Relations Committee member, speaking on behalf of the Committee, thanked Councilmember Fenwick for his service to the Committee as their Council Liaison. He presented Councilmember Fenwick with a token of the Committee's appreciation.

Captain John Hirokawa, Santa Clara County Sheriff's Office addressed Council. He welcomed the new Councilmembers and thanked retiring Councilmembers for their support during their terms. He acknowledged that the Department had always had a good working relationship with the City Council and Town staff and noted that he was looking forward to working with the new Council.

CLOSED PUBLIC COMMENT

3.2 Administering the Oath of Affirmation and Seating of the Newly Elected Councilmembers

The City Clerk administered the Oath of Office to newly elected Councilmember Craig A. T. Jones and Councilmember Jean Mordo and to re-elected Mayor Mike O'Malley. They joined the Council on the dais. Mayor O'Malley welcomed the new members of the Council.

3.3 Council Appointments to Committees and Outside Agencies

Agenda Item 3.3 reordered as Agenda Item 9.2

4. PLANNING COMMISSION REPORT

Planning Director Carl Cahill reported that the Planning Commission had not met since the last Council meeting. He reported that the deconstruction of the building on the former Campbell-Ligeti site was proceeding slowly but they were making visible progress.

5. UNFINISHED BUSINESS

5.1 Town Goals

5.1.1 Complete Town Hall On Time and On Budget

5.1.1a TBI Update

Tony Vierra, TBI Construction Management provided a status report on the new Town Hall construction project. The framing was approximately 80% complete and the trades would be beginning their work shortly. Vierra hoped to have the roof completed by Christmas and the project is on target for a completion date of March 23, 2005.

Mayor Pro Tem Kerr noted that he had visited the site recently and it looked good. The Fire Marshall had made a courtesy check of the project and all fire prevention controls were in place.

5.1.2 Identify and Fund Underground Project

5.1.2a Consideration of Engineering Consultant Services for the Purissima Road and Altamont Road Utility Rule 20A Undergrounding Projects

Councilmember Warshawsky explained that the Undergrounding Subcommittee had been working closely with staff to move the project forward. The proposal before the Council had been reviewed by the Subcommittee and he requested that the item be continued to the next regular City Council meeting to allow for some text revisions.

Council concurred and the item was continued to the December 16, 2004 City Council meeting.

5.1.3 Complete Master Pathway Map

No report was presented.

5.2 Consideration of Surveying Services for a Record Survey of the Proposed Conservation Easement Described as all of APN 102-31-065 (Lands of Crozier-Hogle)

Roger Spreen, Open Space Committee Chair, addressed the City Council. He explained that the request before Council for their consideration was a proposal from Mark Thomas & Company for a land survey to be performed of the Crozier-Hogle property. The survey would serve as baseline documentation and was an integral part of the Town accepting the extraordinary gift of resident Lois Crozier Hogle for an unprecedented conservation easement on her estate. Spreen explained that the Open Space Committee and the Town were honored that Ms. Crozier-Hogle had generously thought about the Town in her estate planning and decided to voluntarily offer a conservation easement on her property that would cover her eleven acres. The easement would be a notable and noticeable accomplishment for the Town and hopefully encourage other voluntary conservation easements. Spreen explained that the property backed up the Stanford lands, was rural, wooded and in its natural condition. He noted that the survey proposal was for approximately \$13,000 and the Committee had \$9,000 available in their budget.

Mayor O'Malley offered that he had visited the site and it was wonderful that the beautiful site was being bequeathed to the Town in perpetuity.

Council discussed the option of sharing the expense of the survey with the Open Space Committee.

MOTION SECONDED AND CARRIED: Moved by Kerr, seconded by Warshawsky and passed by the following roll call vote to adopt Resolution # 82-04 authorizing Mark Thomas & Company to provide survey services for a record survey of the proposed conservation easement described as all of APN 102-31-065, Lands of Crozier Hogle and for the Town to share in the cost of the survey with a not to exceed amount of \$7,000 from Town reserves and the remainder from the Open Space Committee budget.

AYES: Mayor O'Malley, Mayor Pro Tem Kerr, Councilmember Jones,
Councilmember Mordo and Councilmember Warshawsky
NOES: None
ABSENT: None
ABSTAIN: None

Ms. Lois Crozier-Hogle addressed Council. She commented that it was a true joy to think that the Town would accept her property so graciously and it was wonderful to think that it would remain in the present natural state in perpetuity.

Council thanked Ms. Crozier-Hogle and the audience and Council acknowledged her with a standing ovation.

6. NEW BUSINESS

None

7. REPORTS FROM COMMITTEES, SUB-COMMITTEES, AND COUNCILMEMBERS ON OUTSIDE AGENCIES

Councilmember Warshawsky reported that he and Councilmember Mordo had been attending a conflict resolution program for the Los Altos School District and the Bullis group. He believed they were making good progress but that it would take time.

Councilmember Mordo noted that the key was to resolve the differences and they would continue until there was an acceptable solution.

Councilmember Jones commented that it was positive to have community leaders working toward conciliation is a great effort. He believed this was an important endeavor but he suggested there be definitive discussions simultaneously between the two affected parties, the Bullis Charter School and Los Altos School District. Jones noted the importance of a possible resolution that correspondence with the critical timing for the school.

Mayor Pro Tem Kerr reported that he had attended a League of California Cities meeting and thanked Councilmember Warshawsky for attending the Santa Clara County Cities Association meeting as a voting representative for the Town.

Mayor O'Malley attended the Finance and Investment Committee meeting. The Committee had reviewed the new reporting requirements from the Government Standards Reporting Bureau. He noted that some methodologies for the Town's financial reporting had to be modified to meet the new standards. O'Malley offered that the Town's finances were good and he added that the Town was fortunate to have such auspicious financial advisors serving on the Committee.

8. STAFF REPORTS

8.1 City Manager

8.2 City Attorney

8.3 City Clerk

8.3.1 Report on Council Correspondence

9. COUNCIL-INITIATED ITEMS

9.1 Discussion of Los Altos Hills Green Initiative – Long Term Objectives for Energy and Water Conservation – Mayor Pro Tem Kerr

Mayor Pro Tem Kerr introduced this item to the Council. He reviewed a powerpoint presentation that he had designed to illustrate his proposal for a Los Altos Hills Green Initiative. It defined the Green Initiative as a set of strategic conservation goals to be accomplished over a five year period using 2003 as the base line year. It would apply to Town owned properties and facilities and include goals to reduce electrical energy, transportation fuel and water consumption by the Town. Kerr explained that this would have both a financial and environmental benefit. He noted that it was important for the Town government to lead by example. The Town would then apply what they had learned from their conservation efforts to establishing Town ordinances and guidelines relevant to landscaping and solar savings by design. Kerr explained why he believed energy and water conservation were important Town issues noting both global and local impacts.

Mayor Pro Tem Kerr reviewed his proposed timeline and protocol for the Green Initiative. He noted that he would like to set strategic goals at achievable limits. The plan identified the key steps as: 1) research and proposed goals for reductions relative to 2003 base year for Town owned property and facilities; 2) provide examples of how these goals might be met and at what cost; 3) research and propose landscape guidelines and water consumption estimate requirement for new landscape plans-including development of joint initiative with water districts; 4) research and propose solar/energy savings by design ordinance for large homes, including survey of existing ordinances in other cities and towns; and 5) solicit input from contractor and architect community regarding possible ordinances. Kerr offered that he would like to complete the work by Earth Day 2005 and his suggested timeline included: a progress report at the next City Council meeting that would identify the conservation goals for the Town and required funding; discussion and possible adoption for the strategic goals at the January 6, 2005 City Council meeting; and tentative scheduling of public hearings regarding the proposed ordinances at the Planning Commission meeting of January 20, 2005.

Council discussed the proposed Green Energy Initiative. They concurred that it was an admirable and important proposal. Council voiced concerns however on the timeline and suggested that they would first like to complete the projects that were underway that included the Pathways Map, Undergrounding Pilot Program and new Town Hall. They supported the proposal to address the Town's Green Energy goals first before asking the residents to participate in a conservation program. They believed it was important to lead by example. Council suggested a compromise to the timeline with Earth Day as a target date for beginning the initial work on the conservation ordinances.

Councilmember Jones expressed a desire to include incentives for residents to engage in the program to assist them in reducing the payback period.

Mayor Pro Tem Kerr agreed with the consensus of the Council on delaying the development of the ordinances as identified in phase II but questioned if work on setting the strategic goals for the Town would be appropriate at this time.

Councilmember Mordo noted that tentative strategic goals (Steps 1 and 2) could be identified now and redefined later. He suggested that it would be helpful to review what other cities had done.

Mayor O'Malley expressed his concern that there were still uncompleted goals that he would like to see brought to fruition before Council were to move forward with additional projects. He could support the investigation of Green Initiative goals for the Town first.

PASSED BY CONSENSUS: To move forward with considering the strategic goals for the Green Initiative for the Town only (Steps 1 and 2). Council agreed to consider authorizing the formation of a Green Initiative Committee at the January 20, 2005 meeting. Councilmember Jones and Mayor Pro Tem Kerr would work together to gather information from outside agencies and groups during the next thirty days to assist in setting the Town's strategic goals.

City Manager Cassingham offered that before reviewing energy and conservation issues at Town facilities, there were other attendant concerns that had been delayed that would be appropriate to address, especially the seismic retrofit at the corporation yard facility. She noted that these issues should be considered before other expenditures are considered.

Council agreed to revisit the corporation yard retrofit at the January meeting.

9.2 Council Appointments to Committees and Outside Agencies

Following a brief discussion, the following City Council appointments were made as follows:

<u>Town Standing Committee</u>	<u>Council Liaison</u>
Community Relations	Mordo
Emergency Communications	Warshawsky
Environmental Design and Protection	Kerr
Finance/Investment	Mordo
Open Space	O'Malley
Parks and Recreation	O'Malley
Pathways	Warshawsky
Public Education	Jones
Volunteer Awards	Warshawsky
<u>Outside Agencies</u>	
Association of Bay Area Governments (ABAG)	Warshawsky O'Malley (alternate)
City Selection-Local Agency Formation Commission	Mordo

(LAFCO)

Emergency Preparedness Councilmember

League of California Cities-

Peninsula Division

North County Library Authority

Joint Powers Authority Library Board

Valley Transportation Authority (VTA)

Policy Advisory Board

VTA Board of Directors-Alternate Member

(Term 2004/2005)

Purissima Hills Water District

Santa Clara County Task Force to

End Chronic Homelessness in Santa Clara County

Santa Clara Valley Water Commission

SCVWD Lower Peninsula Flood Control District

And Watershed Advisory Board

*Santa Clara County Cities Association Board

*Santa Clara County Cities Association

Legislative Action Committee

Santa Clara County Cities Association

Joint Policy Collaborative

Mordo

Warshawsky

Jones

Mordo

Mordo

Kerr

Kerr

Kerr

O'Malley

M. Cassingham (alternate)

O'Malley

O'Malley

D. Ross (alternate)

Jones

O'Malley (alternate)

Jones

Alternate -none

Warshawsky

PASSED BY CONSENSUS: To approve the Council appointments as noted.

10. PRESENTATIONS FROM THE FLOOR

Dave Corbin, Orchard Hill Lane, addressed Council. He was before Council to comment on an article that had appeared in the San Jose Mercury about the Town's Green Energy Program. He believed the article had contained incorrect information and spoke to his own experience with his home remodel and the installation of a solar system. The system had cost him approximately \$25,000 and had reduced his energy costs drastically. He expected the payback to take eight years noting that the panels had a life of twenty-five years. Corbin had installed the system because of the numerous power outages in his area and told of sharing his electricity with his neighbors during the most recent outage.

Mark Burman, Foothill Lane, addressed Council. He had just overseen the construction of a new winery facility that had included the installation of a 120kw solar system. He cautioned the Council that incentives are an important factor in making the installation of a system attractive. If the monetary incentives (rebates, tax) were to be suspended, the paybacks would take much longer.

11. PUBLIC HEARINGS

- 11.1 Appeal of the Planning Commission's Conditional Approval of a Request for a Site Development Permit for an 89-foot Retractable Antenna Tower with a 17-foot Mast and 50-foot Boom. The Planning Commission Limited

the Antenna Height to 40 feet: Lands of Abraham, 12831 Viscaino Road (177-04) (continued from 10-21-04)

Planning Director Carl Cahill introduced this item to Council. He exhibited a power point presentation that staff had developed in response to Council direction at the October 21, 2004 Public Hearing, to provide Council with photos from different perspectives illustrating the impact of the tower on neighboring residences. Cahill explained that the photos showed the antenna at the 40 foot height that had been recommended by the Planning Commission. It was placed at this height to attempt to keep it below the horizon and to minimize the aesthetic impact of the antenna and tower to the neighbors. It had been moved to the referenced location by the Commission so that it would be in the same general area as the utility pole and power lines. The presentation included: an aerial view of the proposed antenna location on the property; a site plan; a simulated photo of the tower and antennas at 40 feet, the view perspective from 12692 La Cresta Drive before and after the installation of the tower and antenna; and a review of Federal Rule PRB-1 and California Government Code 65850.3 which the Town must observe. Cahill noted that reasonable accommodation standard of PRB-1 requires a municipality to consider the application, make factual findings and attempt to negotiate a satisfactory compromise with the applicant.

Cahill reviewed staff's recommendation with Council to continue the Public Hearing to a future meeting and retain the services of an independent consultant to review the administrative record; engage the applicant in a technical discussion regarding his selection of the request antenna tower height; advise the Town with regard to the technical issues; offer specific recommendations and perform other related work as directed by the Town. Cahill explained that, as with all residents project, the cost of the consultant would be charged to the applicant and should be less than \$5,000.

Councilmember Mordo asked if there were any Town zoning laws that would be applicable to the application and limit the height of the antenna. Cahill explained that the Town's ordinances are quiet on the matter and simply state that antennas or a tower 63 feet in height or more, required Planning Commission review. Cahill did not believe that a variance would be required for the application.

Mayor O'Malley requested clarification from City Attorney Mattas that if the purpose of the consultant would be to ensure that there was a substantive basis for the Planning Commission's decision.

City Attorney Mattas explained that the consultant would provide information relevant to the technical basis for what type of antenna would be necessary for the applicant to be able to operate the amateur radio. Mattas noted that there was case law relevant to these types of decisions and they make clear that there must be minimal practical regulations as well as reasonable attempts to accommodate the use. He added that it would be prudent to have the technical expertise with regards to the configuration of the antenna available to the Council when they make their decision.

OPENED PUBLIC HEARING

Jim Abraham, applicant, addressed Council. He explained that he had a power point presentation that would require a half hour but he would be willing to forgo this for a short verbal presentation. Abraham presented a timeline of his application that included hearings at the Planning Commission on September 23, 2004 and City Council on October 21, 2004. Abraham took issue with the staff and City Attorney's position on his project. He believed they were hostile. He offered the letter from the City Attorney to the Planning Commission and the direction he had given the Planning Commission on the application as examples that supported his belief. Abraham believed that Federal Law supported his antenna. He complained that the Town's charges for reviewing his application had exceeded his deposit and objected to paying for a consultant that had been suggested by the City Attorney. Abraham had reviewed the consultant's background and references and noted that he had universally supported local government. He explained that he would refuse to pay for the consultant and if that was his only option, the Council should deny his application and move forward to the next step.

Abraham offered that he would be willing to try a dispute resolution process that would include himself, his attorney, the Town's attorney, and a Councilmember. He suggested that Council approve his project at tonight's public hearing or move ahead with the dispute resolution process.

Mayor Pro Tem Kerr explained that he had visited the site and questioned if Abraham would be willing to consider retracting the antenna during daylight hours or agreeing to a maximum usage during the day.

Abraham responded by reading into the record what he would be willing to accept: the overall height of the tower and mast not to exceed 106 feet at any time; no part of the antenna would overhang the setback area; the tower would be fully retracted when not in use; the tower and antenna shall not have lights of any kind; the tower shall conform to all current Town building codes; a building permit shall be obtained prior to the installation of the tower and antennas in full compliance with Federal Communications Regulations concerning interference with other license users and electromagnetic radiation limits. Abraham remarked that he would seldom raise the antenna to its full height and would probably be using the equipment on average two hours daily during daylight. He would not agree to any restrictions on the use of his tower.

Mayor O'Malley asked what he says to his neighbors whose views would be impacted by his tower. Abraham commented that he believed only one of his neighbors would be significantly impacted. He expressed his belief that his neighbor did not buy the air over his house and that he did not buy the air over Mr. Yu's house. He concluded that the law is clear and he had a right to build his tower.

Jim Nappo, real estate broker, explained that he had been invited to speak to the Council by the neighbors of Mr. Abraham. He explained how the installation of the tower might impact the home values in the area. Nappo offered that an unsightly object within the view of a home could potentially decrease the value of the home by ten percent (10%).

Mark Burman, Foothill Lane, addressed Council. He reported that an amateur radio antenna near his home had fallen during a storm and hoped Council would take this safety issue into consideration when they review Abraham's request. He offered that the

law requires the Town to accommodate the applicant but does not say he should be able to send a signal to everywhere on earth. Burman agreed with the hiring of the consultant to provide the necessary technical information for the Council to make an informed decision and hoped the Town would consider adopting a workable ordinance with reasonable guidelines for future antenna applications.

Joan Cowley, La Cresta Drive, advised Council that she would be very impacted by the proposal. Her view from her home would be dramatically harmed by the antenna and boom. Cowley commented that the Town had a View Ordinance to protect resident's views but that the applicant was using the FCC regulations as a threat and questioned whether an application that impacted an entire neighborhood was a reasonable request. She noted that Abraham has not been willing to compromise on his request and recommended that Council deny the application.

Chung Ho, La Cresta Drive, expressed his concerns about radiation from the antenna and the electromagnetic wave that would be emitted. He noted that the proposed antenna would have the capacity to emit 10,000 watts and felt that this was too powerful for a residential area.

Dot Schreiner, Saddle Mountain Drive, suggested that there were additional impacts besides aesthetics from the antenna that should be considered. She referenced material regarding telephone frequency interference from antennas and shared her own experiences with telephone problems caused from a neighbor's antenna. Schreiner offered that during a home emergency, a working phone line is critical and that this impact was potentially very dangerous. Schreiner concluded that if the Council should approve the request, she encouraged a condition of approval that would require the applicant to be responsible for rectifying all of the telephone problems caused by the antenna.

John O'Rourke, La Cresta Drive, stated that he a thirty year career in communications system design and had advised the FCC and other government agencies on communication technology issues and communication policies. He explained that the law does require that the Town reasonably accommodate the applicant's reasonable needs. He offered his opinion that the Planning Commission had met this obligation and that the applicant had not shown that a 30' or 40' antenna represented an unreasonable restriction on his ability to communicate. O'Rourke believed there were adequate grounds to deny the application now but that it would be positive for Council to hire the consultant.

Lawrence Weiland, La Cresta Drive, remarked that he had purchased his property forty years ago for the view, neighborhood and schools. He has enjoyed living there until now and is very distressed by the proposal. He questioned how one man could affect so many people's views and the value of their property all for his hobby.

Anna Yu, La Cresta Drive, explained that she was the neighbor that resided directly behind the Abraham property and would be the most affected by his tower. She commented that her family has had a good neighbor relationship with Abraham and hoped that it would continue. Yu added that the tower would be directly in their view and

she believed it would greatly devalue her property. She thanked the Councilmembers for visiting her home and listening to the residents views on the application.

Richard Jones, La Cresta, offered that the Town's Site Development Ordinance was designed to deal with these issues. He believed that the general topography of the Town was causing the problems and wondered if the applicant would be willing to consider locating his antenna to another site. Jones noted that the trees on his property are presently acting as mitigation to the obstruction but they were slowly being cut down.

Adler Yu, La Cresta Drive, offered into the record his letter to the City Council that listed his concerns and reasons for opposing the application.

Jim Waschura, La Cresta Court, distributed a handout to the City Council titled "Lands of Abraham Powerpoint Presentation from Neighbors-Town of Los Altos Hills City Council Meeting, December 2, 2004". He displayed a portion of his powerpoint for Council. Waschura believed that the core issue was the pre-emption of local authority. During his research for the presentation, he discovered that the applicant's property was governed by a set of CC&R's that contained a preservation of view clause. He explained that private contracts do not have the same pre-emption and suggested that the Town consider the existence of the private contract when making its determination regarding the permit application. Waschura concluded that if the Town should have to pursue a legal challenge with the applicant and failed, the neighbors would be ready to consider legal action.

CLOSED PUBLIC HEARING

Council discussion ensued regarding the application. They considered the staff recommendation to continue the Public Hearing and the hiring of the technical consultant.

City Attorney Mattas clarified that the consultant would review the issues of reasonable accommodation and the ability to operate the antenna at various levels.

Councilmember Mordo remarked that the key issue to be considered was the law. The applicant interprets the law to state that the Town must accommodate the application, however, the law states that the Town must reasonably accommodate and the interpretation of what is reasonable is critical. Mordo favored hiring the consultant to assist with the technical determination of what would be required for Abraham to operate his radio reasonably. He concurred with the applicant's request to enter into conflict resolution before moving forward with the consultant. Mordo noted that the consultant should be mutually agreeable to the Town and the applicant.

Mayor Pro Tem Kerr explained that he would support hiring a mutually agreeable consultant, however, he did not believe it would be prudent for the Town to begin paying for applicant's consultants. He requested advice from the City Attorney, before the next time the City Council reviews the issue, on the information provided by Mr. Waschura regarding the subdivision CC&R's that are applicable to Abraham's property.

Councilmember Jones noted that he supported hiring the recommended consultant. He disagreed that the consultant would be biased in favor of the Town and spoke to his

qualifications. He offered that often a consultant was hired by a Town to assist them with the installation of their communications tower. Jones explained that it would be appropriate for the Town to pay for the consultant. He requested additional information from staff before the next Council review of the project including the number of amateur radio towers in Town and their height and a legal analysis with more detail on the California code, specifically if the California code sections that were being discussed refer to the totality of the system in Town or every specific tower. Jones agreed to pursue the conflict resolution process but would support doing it simultaneously with hiring the consultant.

Councilmember Warshawsky supported the conflict resolution process and the hiring of a mutually agreeable consultant. He would favor the Town paying for the consultant.

Mayor O'Malley concurred with the Council's support of entering into the conflict resolution process. However, he noted that there appeared to be vast distance between what Abraham wanted and the neighbors.

Following a brief discussion, it was determined that those involved in the initial dispute resolution meeting would be: applicant Jim Abraham and his Counsel, Councilmember Jones, City Attorney Mattas, Planning Director Cahill and neighborhood representative Jim Waschura.

MOTION SECONDED AND CARRIED: Moved by Kerr, seconded by Warshawsky and passed by the following roll call vote: 1) Direct staff to respond to the legal questions that have been raised by the Council relevant to the applicable California code sections and the CC&R's; 2) commence the dispute resolution process and direct the City Attorney's office and staff to participate in the dispute resolution process with Councilmember Jones, a representative of the neighborhood (Waschura) and Mr. Abraham and his Counsel; 3) and for the Town, at it's cost, to retain the consultant recommended by staff to prepare technical information for the next consideration by the Council.

AYES: Mayor O'Malley, Mayor Pro Tem Kerr, Councilmember Jones,
Councilmember Mordo and Councilmember Warshawsky
NOES: None
ABSENT: None
ABSTAIN: None

Applicant Jim Abraham asked for time to review the CC&R's issue with his attorney before moving forward. Mayor O'Malley offered that the applicant should contact the City Attorney when he was ready to move forward.

Abraham requested clarification on what fees he would be responsible for paying. Mattas noted that the Town had agreed to pay for the consultant. Any other fees that the applicant had agreed to in the agreement that he had signed to process the application would still be applicable.

Cahill explained that Abraham would be responsible for charges incurred for the City Attorney's time and in-house staff time. Cahill noted that the project deposit had been expended and there was currently a deficit. The applicant had been advised.

Abraham requested a cap of his fees. The City Attorney noted that the City Council should be mindful of equal treatment of all applicants.

Council discussion ensued regarding the fees. The City Attorney offered to provide cost estimates from his office to the applicant and Council before the next regular City Council meeting and prior to the Council considering their decision to waive costs. Mattas noted that he would like concurrence from Mr. Abraham that if the estimates were not agreeable to Mr. Abraham and the project had to wait for Council's further direction, that he understood there would be no further progress on his application for a period of two weeks.

Mr. Abraham agreed on the record that he would be amenable to this timeline.

Mayor Pro Tem Kerr offered that he would be hesitant to waive fees, noting that all applications have some level of conflict with neighbors and the fees are paid by the applicant because he/she is the one that received the benefit from the application. He would not be in favor of setting a precedent.

The City Council adjourned to the Closed Session at 9:50 pm.

12. CLOSED SESSION

CLOSED SESSION: CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION: Government Code Section 54956.9(a): Town of Los Altos Hills v. Los Altos School District

The City Council reconvened to the Regular City Council meeting at 10:01 pm. No action was taken.

13. ADJOURNMENT

There being no further business the Regular City Council meeting was adjourned at 10:02 p.m.

Respectfully submitted,

Karen Jost
City Clerk

The minutes of the December 2, 2004 Regular City Council Meeting were approved as presented at the December 16, 2004 Regular City Council Meeting.